

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 37 of 1993

with

WEALTH TAX REFERENCES NOS. 40 OF 1994, 10 OF 1995

108 OF 1995, 143 OF 1995, 145 OF 1995

AND 75 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

ASHMABEN AHMED SAHIGARA AND OTHERS

Appearance:

MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: 27/08/1999

ORAL JUDGEMENT

Per Thakker, J.:

In Reference No. 37 of 1993, the following question is
referred for the opinion of this Court:-

"Whether the Appellate Tribunal is right in law and on facts in directing the Wealth Tax Officer to allow exemption under Section 5 (1) (iv) of the Wealth Tax Act in respect of the value of the assessee's share in the building of the partnership firm of M/s Abdul Razak and Company?"

Similar question is referred to in other matters. We may, however, state that in Wealth Tax Reference No. 75 of 1996, a prayer was made to refer two questions for opinion of this Court. They were as under :

"1. Whether the Appellate Tribunal is right in law and on facts in disposing off the ground raised by the Revenue in respect of allowing discount at 15% and 50% in determining the value of assessee interest as partner in the property and machinery respectively belonging to the firms as being irrelevant ?

2. Whether the Appellate Tribunal is right in law and on facts in directing the WTO to grant exemption under Section 5 (1) (iv) of the W.T.Act in respect of the shares in the building owned by the firm in which the assessee is a partner?"

The question which is referred to this Court is only question No.2 as, in the opinion of the Appellate Tribunal, question No.1 was not required be referred to this Court for its opinion.

It was stated at the Bar that the point is concluded by a decision of this Court in Commissioner of Wealth Tax vs. Maheshkumar R.Patel, 216 ITR 272. In that case, the following question of law was referred for opinion of this Court :

"Whether on the facts and in the circumstances of the case, the assessee was entitled to relief under section 5 (1) in respect of his share in the bank deposits held by the firm in which he was a partner and relief under section 5 (1) in respect of the house property owned by the firm ?"

After considering the relevant provisions of the Wealth Tax Act , 1957 and Wealth Tax Rules, 1957, the Division Bench observed as under :

"It is further to be noticed that neither under

general law, nor under the provisions of the Wealth Tax Act, is a firm a separate entity from its partners. A firm as such is not a juristic person capable of holding property. Property owned in the firm name is in fact owned by the partners of the firm jointly. The Wealth tax Act does not provide that because an asset is jointly owned, it will be subjected to wealth tax, notwithstanding the fact that no tax is otherwise payable on it or is to be excluded from the computation of net wealth under section 5, merely because of the jointness of ownership. Merely because under the provisions of the Income tax Act, a firm is treated as a separate assessee, it does not become a separate entity for the purposes of the Wealth Tax Act also, when there is no such provision. Therefore, there is no warrant for treating property under the ownership of an individual and under joint ownership as in a partnership firm for the purpose of computing the net wealth under the Wealth Tax Act, differently.

In this connection, it may also be noticed that section 5 speaks of assets not to be included in the net wealth of a "person" as distinct from assessee. If, for the purpose of ownership of assets, a firm is held to be a person distinct from its partners, it applies to computation of net wealth of the firm also. If a firm is not held to be a person then the necessary corollary is that the partners are the joint owners of the asset and they being the owners of the asset, are entitled to exclude its value from the computation of their net wealth for the purpose of wealth tax.

It will also be pertinent to note that the rules also provide for valuation of the global value of any business as a whole. Such rules also prescribe for exclusion of assets exempted from payment of wealth tax under any provision of the Act or assets on which no wealth tax is payable, by way of making adjustment in the global value of assets as disclosed in the balance sheet for the purpose of assessing the net wealth of an assessee for the purpose of subjecting it to wealth tax. In view of that, if the interest of a partner in the firm is to be computed on the global value basis, then also such exempted assets have to be excluded from computing the

global value."

As the point is concluded by the above decision of this Court , in our opinion, all the References must be disposed of in light of the said decision.

References are accordingly answered in the affirmative i.e in favour of the assessee and against the Revenue. In the facts and circumstances of the case, there shall be no order as to costs.

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